HEMISPHERX BIOPHARMA INC
Form 10-Q/A
February 14, 2011

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-Q/A
Quarterly Report Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

For the Quarterly Period Ended June 30, 2010

Commission File Number: 1-13441

HEMISPHERX BIOPHARMA, INC.
(Exact name of registrant as specified in its charter)

Delaware	52-0845822
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

1617 JFK Boulevard, Suite 660, Philadelphia, PA 19103
(Address of principal executive offices) (Zip Code)

(215) 988-0080
(Registrant's telephone number, including area code)

Not Applicable
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.
x Yes ¨ No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or such shorter period that the registrant was required to submit and post such files).
¨Yes x No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

¨ Large accelerated filer	x Accelerated filer
¨ Non-accelerated filer	¨ Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
¨ Yes x No

134,396,443 shares of common stock were issued and outstanding as of August 03, 2010.

EXPLANATORY NOTE

Hemispherx Biopharma, Inc. (“Hemispherx”, the “Company”, “we”, “our” or “us”) is filing this amendment to its Quarte Report on Form 10-Q (“Form 10-Q/A”) to restate its Consolidated Condensed Financial Statements as of and for the three and six months ended June 30, 2010 and 2009 as described in Note 11, Restatement, of the Notes to the Consolidated Condensed Financial Statements included herein. As previously disclosed in the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on December 28, 2010, the Company received a comment letter from the SEC concerning its review of the Company’s annual report on Form 10-K, as amended, for the year ended December 31, 2009. During the process of resolving the SEC’s comments, the SEC Staff alerted the Company that they did not agree with the Company’s method of computing the fair value of certain Warrants. As a result, on December 22, 2010, after discussion with the Company’s independent registered public accounting firm, the Company’s Audit Committee determined that the previously issued financial statements included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2009 and in its Forms 10-Q for the periods ended March 31, 2010, June 30, 2010 and September 30, 2010 and in its Forms 10-Q for the periods ended June 30, 2009 and September 30, 2009, should not be relied upon. The Company simultaneously herewith is filing amendments to its Annual Report on Form 10-K for the year ended December 31, 2009 and Quarterly Reports on Form 10-Q for the quarters ended March 31, 2010 and September 30, 2010 to reflect this restatement.

For the convenience of the reader, this Form 10-Q/A sets forth the Company’s original Form 10-Q for the quarter ended June 30, 2010 (the “Original 10-Q") in its entirety, as amended by, and to reflect, the restatement. No attempt has been made in this Form 10-Q/A to update other disclosures presented in the Original 10-Q, except as required to reflect the effects of the restatement. This Form 10-Q/A does not reflect events occurring after the filing of the Original 10-Q or modify or update those disclosures, including the exhibits to the Original 10-Q affected by subsequent events.

The following sections of this Form 10-Q/A have been amended to reflect the restatement:

Part I – Item 1 – Financial Statements; and
Part I – Item 2 – Management’s Discussion and Analysis of Financial Condition and Results of Operations.

This Form 10-Q/A has been signed as of a current date and, as required by Rule 12b-15 of the Securities Exchange Act of 1934, all certifications of the Company’s Chief Executive Officer and our Chief Financial and Accounting Officer are given as of a current date. Accordingly, this Form 10-Q/A should be read in conjunction with our filings made with the SEC subsequent to the filing of the Original 10-Q, including any amendments to those filings.

PART I - FINANCIAL INFORMATION

ITEM 1: Financial Statements

HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES
Consolidated Balance Sheets

(in thousands, except for share and per share amounts)

	December 31, 2009 (restated)	June 30, 2010 (Unaudited) (restated)
ASSETS		
Current assets:		
Cash and cash equivalents (Note 12)	$ 58,072	$ 5,331
Marketable securities maturing in less than one year (Note 5)	-	30,433
Inventories (Note 4)	-	934
Prepaid expenses and other current assets	332	120
Total current assets	58,404	36,818
Property and equipment, net	4,704	4,675
Marketable securities maturing in one year or greater (Note 5)	-	14,783
Patent and trademark rights, net	830	836
Investment	35	35
Construction in progress (Note 8)	135	405
Other assets (Note 4)	886	35
Total assets	$ 64,994	$ 57,587
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 1,294	$ 1,335
Accrued expenses (Note 6)	1,321	509
Current portion of capital lease (Note 7)	-	35
Total current liabilities	2,615	1,879
Long-term liabilities		
Long-term portion of capital lease (Note 7)	-	21
Redeemable warrants (Note 11)	3,684	2,760
Total liabilities	6,299	4,660
Commitments and contingencies		
Stockholders' equity (Note 9):		
Preferred stock, par value $0.01 per share, authorized 5,000,000; issued and outstanding; none	-	-
	133	135

Common stock, par value $0.001 per share, authorized 200,000,000 shares; issued and outstanding 132,787,447 and 134,368,677, respectively				
Additional paid-in capital		263,151		264,179
Accumulated other comprehensive loss		-		(2)
Accumulated deficit		(204,589)		(211,385)
Total stockholders’ equity		58,695		52,927
Total liabilities and stockholders’ equity	$	64,994	$	57,587

See accompanying notes to consolidated financial statements.

HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES
Consolidated Statements of Operations
(in thousands, except share and per share data)
(Unaudited)

	Three months ended June 30, 2009 (restated)	Three months ended June 30, 2010 (restated)
Revenues:		
Clinical treatment programs	$ 17	$ 41
Total revenues	17	41
Costs and expenses:		
Production/cost of goods sold	152	328
Research and development	1,982	1,694
General and administrative	1,862	1,788
Total costs and expenses	3,996	3,810
Operating loss	(3,979)	(3,769)
Interest and other income	109	93
Redeemable warrants valuation adjustment(Note 11)	(10,861)	2,260
Net loss	$ (14,731)	$ (1,416)
Basic and diluted loss per share (Note 2)	$ (.15)	$ (.01)
Weighted average shares outstanding, basic and diluted	100,077,267	133,107,607

See accompanying notes to consolidated financial statements.

HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES
Consolidated Statements of Operations
(in thousands, except share and per share data)
(Unaudited)

	Six months ended June 30, 2009 (restated)	2010 (restated)
Revenues:		
Clinical treatment programs	$ 46	$ 73
Total revenues	46	73
Costs and expenses:		
Production/cost of goods sold	273	468
Research and development	3,577	3,690
General and administrative	3,028	3,757
Total costs and expenses	6,878	7,915
Operating loss	(6,832)	(7,842)
Financing costs	(241)	-
Interest and other income	116	122
Redeemable warrants valuation adjustment (Note 11)	(10,861)	924
Net loss	$ (17,818)	$ (6,796)
Basic and diluted loss per share (Note 2)	$ (.20)	$ (.05)
Weighted average shares outstanding, basic and diluted	89,110,201	132,963,622

See accompanying notes to consolidated financial statements.

HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES
Consolidated Statements of Changes in Stockholders' Equity and Comprehensive Loss
(in thousands except share data)
(Unaudited)

	Common Stock Shares	Common Stock $.001 Par Value	Additional Paid-In Capital (restated)	Accumulated Other Compre-hensive Loss	Accumulated Deficit (restated)	Total Stockholders' Equity (restated)	Compre-hensive Loss (restated)
Balance at December 31, 2009	132,787,447	$ 133	$ 263,151	$ -	$ (204,589)	$ 58,695	$ -
Stock issued for settlement of accounts payable	446,761	-	302	-	-	302	-
Equity based compensation	614,469	1	434	-	-	435	-
Shares sold at the market	520,000	1	292	-	-	293	
Unrealized loss in investment securities	-	-	-	(2)	-	(2)	(2)
Net loss - restated	-	-	-	-	(6,796)	(6,796)	(6,796)
Balance at June 30, 2010 - restated	134,368,677	$ 135	$ 264,179	$ (2)	$ (211,385)	$ 52,927	$ (6,798)

See accompanying notes to consolidated financial statements.

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HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES
Consolidated Statements of Cash Flows
For the Six Months Ended June 30, 2009 and 2010
(in thousands)
(Unaudited)

	2009 (restated)	2010 (restated)
Cash flows from operating activities:		
Net loss - restated	$ (17,818)	$ (6,796)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation of property and equipment	177	192
Amortization of patent and trademark rights, and royalty interest	186	39
Financing cost related to Standby Financing	241	-
Redeemable warrants valuation adjustment	10,861	(924)
Equity based compensation	141	435
Gain on disposal of equipment	(83)	(77)
Change in assets and liabilities:		
Accounts and other receivables	(9)	-
Prepaid expenses and other current assets	171	212
Accounts payable	1,017	343
Accrued expenses	987	(812)
Net cash used in operating activities	$ (4,129)	$ (7,388)
Cash flows from investing activities:		
Purchase of property plant and equipment	$ (5)	$ (362)
Additions to patent and trademark rights	(130)	(45)
Capital lease deposit	-	(6)
Purchase of short-term investments	(1,000)	(45,218)
Net cash used in investing activities	$ (1,135)	$ (45,631)

HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES
Consolidated Statements of Cash Flows (Continued)
For the Six Months Ended June 30, 2009 and 2010
(in thousands)
(Unaudited)

	2009 (restated)	2010 (restated)
Cash flows from financing activities:		
Payments on capital lease	$ -	$ (15)
Warrants and options converted	5,683	-
Proceeds from sale of stock, net of issuance costs	34,119	293
Net cash provided by financing activities	$ 39,802	$ 278
Net increase (decrease) in cash and cash equivalents	34,538	(52,741)
Cash and cash equivalents at beginning of period	6,119	58,072
Cash and cash equivalents at end of period	$ 40,657	$ 5,331
Supplemental disclosures of non-cash investing and financing cash flow information:		
Issuance of common stock for accounts payable and accrued expenses	$ 1,137	$ 302
Equipment acquired by capital lease	$ -	$ 70
Unrealized loss on investments	$ -	$ (2)
Redeemable warrants valuation adjustment	$ 10,861	$ (924)

See accompanying notes to consolidated financial statements.

HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 1: Basis Of Presentation

The consolidated financial statements include the financial statements of Hemispherx Biopharma, Inc. and its wholly-owned subsidiaries. The Company has three domestic subsidiaries BioPro Corp., BioAegean Corp. and Core Biotech Corp., all of which are incorporated in Delaware and are dormant. The Company's foreign subsidiary, Hemispherx Biopharma Europe N.V./S.A., established in Belgium in 1998, has minimal activity. All significant intercompany balances and transactions have been eliminated in consolidation.

In the opinion of Management, all adjustments necessary for a fair presentation of such consolidated financial statements have been included. Such adjustments consist of normal recurring items and the impact of a restatement on the December 31, 2009 Balance Sheet and Income Statement for the year then ended. Interim results are not necessarily indicative of results for a full year.

The interim consolidated financial statements and notes thereto are presented as permitted by the Securities and Exchange Commission ("SEC"), and do not contain certain information which will be included in our annual consolidated financial statements and notes thereto.

These consolidated financial statements should be read in conjunction with our consolidated financial statements for the year ended December 31, 2009 included in our amended and restated annual report on Form 10-K/A-2, filed on February 11, 2011.

Note 2: Net Loss Per Share

Basic and diluted net loss per share is computed using the weighted average number of shares of common stock outstanding during the period. Equivalent common shares, consisting of stock options and warrants including the Company's convertible debentures, which amounted to 35,817,809 and 52,641,984 shares, are excluded from the calculation of diluted net loss per share for the six months ended June 30, 2009 and 2010, respectively, since their effect is antidilutive.

Note 3: Equity Based Compensation

The fair value of each option award is estimated on the date of grant using a Black-Scholes option valuation model. Expected volatility is based on the historical volatility of the price of the Company's stock. The risk-free interest rate is based on U.S. Treasury issues with a term equal to the expected life of the option. The Company uses historical data to estimate expected dividend yield, expected life and forfeiture rates. The fair values of the options granted, were estimated based on the following weighted average assumptions:

	Six Months Ended June 30,	
	2009	2010
Risk-free interest rate	1.76% - 2.54%	1.02%-2.03%
Expected dividend yield	-	-
Expected lives	2.5 – 5.0 yrs.	5.0 years
Expected volatility	86.78% - 110.57%	109.72%-110.01%
Weighted average grant date fair value of options and warrants issued	$113,814	$402,771

Stock option activity for 2009 and during the six months ended June 30, 2010, is as follows:

Stock option activity for employees:

	Number of Options		Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)		Aggregate Intrinsic Value
Outstanding December 31, 2008	6,258,608	$	2.60	7.92	$	-
Options granted	-		-	-		-
Options forfeited	(29,856)		2.24	5.75		-
Outstanding December 31, 2009	6,228,752	$	2.60	6.95		-
Options granted	820,000		.66	10.00		-
Options forfeited	-		-	-		-
Outstanding June 30, 2010	7,048,752	$	2.37	6.64	$	-
Exercisable June 30, 2010	6,991,530	$	2.38	6.64	$	-

The weighted-average grant-date fair value of options granted during the six months ended June 30, 2009 and 2010 was $-0- and $384,000, respectively.

Unvested stock option activity for employees:

	Number of Options		Weighted Average Exercise Price	Average Remaining Contractual Term (Years)		Aggregate Intrinsic Value
Outstanding December 31, 2008	76,944	$	1.41	8.89	$	-
Options granted	-		-	-		-
Options vested	(38,611)		1.28	7.92		-
Options forfeited	-		-	-		-
Outstanding December 31, 2009	38,333	$	1.54	8.00		-
Options granted	18,889		.66	10.00		-
Options vested	-		-	-		-
Options forfeited	-		-	-		-
Outstanding June 30, 2010	57,222	$	1.25	8.33	$	-

Stock option activity for non-employees:

	Number of Options		Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding December 31, 2008	2,417,482	$	2.35	6.98	-
Options granted	361,250		2.12	7.00	-
Options exercised	(293,831)		1.56	7.93	-
Options forfeited	(251,469)		2.14	7.43	-
Outstanding December 31, 2009	2,233,432	$	2.44	5.73	-
Options granted	40,000		.71	9.88	-
Options exercised	-		-	-	-
Options forfeited	-		-	-	-
Outstanding June 30, 2010	2,273,432	$	2.41	5.31	-
Exercisable June 30, 2010	2,152,598	$	2.39	5.61	-

The weighted-average grant-date fair value of options granted during the six months ended June 30, 2009 and 2010 was approximately $38,000 and $18,700, respectively.

Unvested stock option activity for non-employees during the year:

	Number of Options		Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)		Aggregate Intrinsic Value
Outstanding December 31, 2008	26,667	$	1.43	9.00	$	-
Options granted	131,250		2.81	3.42		-
Options vested	(18,333)		1.79	7.45		-
Options forfeited	-		-	-		-
Outstanding December 31, 2009	139,584	$	2.68	3.76		-
Options granted	-		-	-		-
Options vested	(18,750)		2.81	3.00		-
Options forfeited	-		-	-		-
Outstanding June 30, 2010	120,834	$	2.66	3.88	$	-

The impact on the Company's results of operations of recording equity based compensation for the six months ended June 30, 2009 and 2010 was to increase general and administrative expenses by approximately $141,000 and $435,000 respectively. The impact on basic and fully diluted earnings per share for the six months ended June 30, 2009 was $-0- and for June 30, 2010 was to increase loss per share by $0.03.

As of June 30, 2009 and 2010, respectively, there was $28,000 and $19,000 of unrecognized equity based compensation cost related to options granted under the Equity Incentive Plan.

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Note 4: Inventories and Other Assets

The Company uses the lower of first-in, first-out ("FIFO") cost or market method of accounting for inventory.

Inventories consist of the following: (in thousands)

	December 31, 2009	June 30, 2010
Inventory work in process	$ -	$ 934
Finished goods, net of reserves of $282,000 at December 31, 2009 and $250,000 at June 30, 2010.	-	-
	$ -	$ 934

The conversion of existing Alferon N Injection® Work-In-Progress inventory was started up again in May 2010 towards the manufacture of new Finished Goods and is estimated to be available for commercial sales in mid-2011. As a result the Work-In-Progress of $864,000, which was included in "Other assets" in 2009, has been reclassified and included with current assets at the June 30, 2010 value of $934,000.

Other assets consist of the following: (in thousands)

	December 31, 2009	June 30, 2010
Inventory work in process	$ 864	$ -
Security deposit	15	16
Internet Domain Names	7	7
Deposit on new telephone system	-	6
Security deposit on Capital Lease (see Note 7)	-	6
	$ 886	$ 35

Note 5: Marketable Securities

Marketable securities consist of fixed income securities with remaining maturities of greater than three months at the date of purchase, debt securities and equity securities. At June 30, 2010, all of our fixed income securities were classified as available for sale investments and measured as Level 1 instruments of the fair value measurements standard (see Note 10: Fair Value). Securities classified as available for sale consisted of:

June 30, 2010
(in thousands)

Name Of Security	Cost	Market Value	Unrealized Gain (Loss)	Maturity Date
Marketable Securities with maturity periods less than one year:				
Protective Life	523	502	(21)	8/16/2010
GE Money Bank	250	250	-	10/15/2010
Discover Bank	500	500	-	10/29/2010
Toyota Motor Credit	1,020	1.017	(3)	12/15/2010

GE Money Bank	250	249	(1)	1/14/2011
World Financial Capital	300	299	(1)	1/28/2011
Bank of America	500	499	(1)	4/21/2011
Merrick Bank	250	250	-	4/21/2011
American Express Bank FSB	250	250	-	9/30/2010
Beal Bank	250	250	-	12/8/2010
Safra National Bank	250	250	-	1/1/2011
Goldman Sachs	1,062	1,026	(36)	1/15/2011
Discover Bank	250	249	(1)	6/23/2011
PIMCO	22,200	22,531	331	NA
Cisco Systems	786	771	(15)	2/22/2011
IBM Corp.	784	772	(12)	3/22/2011
Oracle Corp.	785	768	(17)	1/15/2011
Total Marketable Securities with maturity periods less than one year:	$ 30,210	$ 30,433	$ 223	

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Marketable Securities with maturity periods greater than one year:

PlainsCapital Bank		250		249		(1)	10/31/2011
Citibank N.A.		250		250		-	4/30/2012
Wright Express Financial Services		250		250		-	4/26/2012
Bank of Northern Miami		250		250		-	7/30/2012
Park Sterling Bank		250		250		-	10/16/2012
Columbus Bank & Trust Co.		250		251		1	10/22/2012
World's Foremost Bank		100		103		3	1/28/2013
Medallion Bank		242		244		2	4/30/2013
Wells Fargo		1,081		1,052		(29)	8/1/2011
Bank of America		1,066		1,042		(24)	8/15/2011
Wachovia Bank		274		271		(3)	9/28/2011
Bank One Corp.		1,070		1,062		(8)	11/15/2011
Morgan Stanley		1,077		1,045		(32)	1/9/2012
Goldman Sachs		1,035		1,018		(17)	8/1/2012
Merrill Lynch		1,088		1,059		(29)	8/15/2012
Morgan Stanley		1,071		1,053		(18)	8/31/2012
Wells Fargo		1,083		1,066		(17)	9/1/2012
GE Capital		104		102		(2)	5/29/2012
Sallie Mae Bank		104		102		(2)	5/29/2012
Israel Disc Bank		250		249		(1)	9/11/2012
Allstate		115		112		(3)	9/16/2012
World's Foremost Bank		104		103		(1)	3/4/2013
BWW Bank North America		251		252		1	6/4/2013
Goldman Sachs		250		251		1	6/17/2013
General Dynamics		763		758		(5)	7/15/2011
Merck & Co.		817		796		(21)	11/15/2011
Shell International		755		754		(1)	9/22/2011
3M Company		808		789		(19)	11/1/2011
Total Marketable Securities with maturity periods greater than one year:	$	15,008	$	14,783	$	(225)	
Total Marketable Securities	$	45,218	$	45,216		(2)	

No investment was pledged to secure public funds at June 30, 2010.

Note 6: Accrued Expenses

Accrued expenses consists of the following:

	(in thousands) December 31, 2009	June 30, 2010
Compensation	$ 716	$ 205
Professional fees	421	154
Other expenses	71	37
Other liability	113	113
	$ 1,321	$ 509

Note 7: Capital Lease

The Company has acquired equipment under a capital lease as follows:

	(in thousands) Asset Balance at June 30, 2010
Leased Equipment included with property and equipment	$ 70
Less: accumulated depreciation	(4)
	$ 66

The following is a schedule by year of future minimum lease payments under the capital lease as of June 30, 2010:

	2010	$ 18
	2011	35
	2012	4
Total lease payments remaining		57
Less: amount representing interest		(1)
Present value of remaining minimum lease payments		56
Less: current obligations under lease obligations		(35)
Long-term capital lease obligations		$ 21

Lease payments made under this capital lease are $3,000 per month for 24 months starting February 2010. Imputed rate is 2% per annum. A security deposit of $6,000 was paid and is included in other assets.

Note 8: Construction in Progress

On September 16, 2009, our Board of Directors approved up to $4.4 million for full engineering studies, capital improvements, system upgrades and introduction of building management systems to enhance production of three products: Alferon N Injection®, Alferon® LDO and Ampligen®. Construction in progress consists of accumulated costs for the construction and installation of property and equipment within the Company’s New Jersey facility until the assets are placed into service. As of December 31, 2009, construction in progress was $135,000 as compared to $405,000 for the six months ended June 30, 2010.

Note 9: Stockholders' Equity

The Equity Compensation Plan effective May 1, 2004, authorizes the grant of non-qualified and incentive stock options, stock appreciation rights, restricted stock and other stock awards. A maximum of 8,000,000 shares of common stock is reserved for potential issuance pursuant to awards under the Equity Plan of 2004. Unless sooner terminated, the Equity Compensation Plan of 2004 will continue in effect for a period of 10 years from its effective date. As of June 30, 2010, the Company effectively exhausted this plan and issued an aggregate 7,999,981 shares, stock options and warrants to vendors, Board Members, Directors and consultants under the 2004 Equity Compensation Plan. The shares had prices ranging from $0.35 to $0.89 based on the NYSE Amex closing price. The stock options had various exercise prices ranging from $1.30 to $6.00, had terms of five to ten years and vesting over varying periods.

The Equity Incentive Plan of 2007, effective June 20, 2007, authorizes the grant of non-qualified and incentive stock options, stock appreciation rights, restricted stock and other stock awards. A maximum of 9,000,000 shares of common stock is reserved for potential issuance pursuant to awards under the Equity Incentive Plan of 2007. Unless sooner terminated, the Equity Incentive Plan of 2007 will continue in effect for a period of 10 years from its effective date. The Company issued to vendors, Board Members, Directors and consultants, shares, stock options, warrants and "Incentive Rights" under the Employee Wages or Hours Reduction Program. As of June 30, 2010, the Company effectively exhausted this plan and issued an aggregate of 8,980,374 shares and shares issuable upon exercise/conversion of the foregoing securities. The aggregate shares to vendors, Board Members, Directors and consultants had prices ranging from $0.32 to $2.54 based on the NYSE Amex closing price. The stock options had various exercise prices ranging from $0.72 to $3.05, terms of ten years and vesting over varying periods.

The Company utilized the Black-Scholes Pricing Model to fair value the stock options which had been issued during the six months ended June 30, 2010 and accordingly recorded approximately $435,000 as equity based compensation for these issuances during this period. The stock options generally vested immediately upon grant with the exception of 20,000 options to one officer which vest over 18 months.

In an effort to conserve our cash, the Employee Wage Or Hours Reduction Program (the "Program") was ratified by our Board effective January 1, 2009. The Incentive Rights are rights for employees to receive Company shares and had prices ranging from $0.13 to $0.80 based on the average daily closing prices of the Company shares on the NYSE Amex. The Program was suspended as of May 31, 2009 with employees returning back to their rate of pay as of January 1, 2009. At the passage of six months for each of their months of participation, non-affiliate employees executed their right to receive shares for the months ended July 31, August 31, September 30, October 30 and November 30, 2009. Dr. William A. Carter, and his spouse, Dr. Katalin Kovari, have yet to exercise their rights to receive their 820,826 shares of stock related to this Program.

The Equity Incentive Plan of 2009, effective June 24, 2009, authorizes the grant of non-qualified and incentive stock options, stock appreciation rights, restricted stock and other stock awards. A maximum of 15,000,000 shares of common stock is reserved for potential issuance pursuant to awards under the Equity Incentive Plan of 2009. Unless sooner terminated, the Equity Incentive Plan of 2009 will continue in effect for a period of 10 years from its effective date. As of June 30, 2010 the Company issued 2,571,081 securities to Directors and consultants consisting of an aggregate of 2,101,642 options and 469,439 shares of common stock issuable upon exercise/conversion of the foregoing securities. The shares issued to consultants had prices ranging from $0.40 to $0.68 based on the NYSE Amex closing price.

The aggregate stock options had various exercise prices ranging from $0.51 to $2.81, had terms of ten years and vested immediately upon grant.

On May 28, 2010, we entered into an Equity Distribution Agreement (the "Agreement") with Maxim Group LLC ("Maxim") to create an At-The-Market ("ATM") equity program under which we may sell up to 32,000,000 shares of our Common Stock (the "Shares") from time to time through Maxim as our sales agent (the "Agent"). Under the Agreement, the Agent is entitled to a commission at a fixed commission rate of 4.0% of the gross sales price per Share sold, up to aggregate gross proceeds of $10,000,000, and, thereafter, at a fixed commission rate of 3.0% of the gross sales price per Share sold. Sales of the Shares under the Agreement may be made in transactions that are deemed to be "at-the-market" offerings as defined in Rule 415 under the Securities Act of 1933, as amended, including sales made by means of ordinary brokers' transactions, including on the NYSE Amex, at market prices or as otherwise agreed with the Agent. We have no obligation to sell any of the Shares, and may at any time suspend offers under the Agreement or terminate the Agreement. The Shares will be issued pursuant to our previously filed and effective Registration Statement on Form S-3 (File No. 333-159856). On June 22, 2009, we filed a base Prospectus and on May 28, 2010, filed a Prospectus Supplement relating to the offering with the Securities and Exchange Commission. During the quarter ended June 30, 2010, we sold 520,000 shares through the ATM equity program that resulted in net cash proceeds of $292,785 and commissions paid to Maxim of $12,199. The Shares sold through the ATM equity program had an average daily selling price ranging from $0.53 to $0.61.

Note 10: Fair Value

The Company is required under U.S. Generally Accepted Accounting Principles ("GAAP") to disclose information about the fair value of all the Company's financial instruments, whether or not these instruments are measured at fair value on the Company's consolidated balance sheet.

The Company estimates that the fair values of cash and cash equivalents, securities, other assets, accounts payable and accrued expenses approximate their carrying values due to the short-term maturities of these items. The Company also has certain warrants with cash settlement or "Put" rights in the unlikely occurrence of a Fundamental Transaction (the "Warrants"). For a discussion about how the Company values these Warrants, please see Note 11: Restatement, below.

On January 1, 2008, the Company adopted new accounting guidance (codified at FASB ASC 820 and formerly Statement No. 157 Fair Value Measurements) that defines fair value, establishes a framework for measuring fair value in GAAP, and expands disclosures about fair value measurements. The guidance does not impose any new requirements around which assets and liabilities are to be measured at fair value, and instead applies to asset and liability balances required or permitted to be measured at fair value under existing accounting pronouncements. The Company measures its warrant liability at fair value. As of June 30, 2010, except for the Warrants, the Company had no derivative assets or liabilities.

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FASB ASC 820-10-35-37 (formerly SFAS No. 157) establishes a valuation hierarchy based on the transparency of inputs used in the valuation of an asset or liability. Classification is based on the lowest level of inputs that is significant to the fair value measurement. The valuation hierarchy contains three levels:

- Level 1 – Quoted prices are available in active markets for identical assets or liabilities at the reporting date.

- Level 2 – Observable inputs other than Level 1 prices such as quote prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

- Level 3 – Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. Level 3 assets and liabilities include financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or other valuation techniques, as well as instruments for which the determination of fair value requires significant management judgment or estimation. As of June 30, 2010, the Company has classified the Warrants (that contain embedded put and call features) as Level 3. Management evaluates a variety of inputs and then estimates fair value based on those inputs. As discussed below in Note 11: Restatement, the Company utilized the Monte Carlo Simulation approach in valuing these Warrants.

The table below presents the balance s of assets and liabilities measured at fair value on a recurring basis by level within the hierarchy as of June 30, 2010 (in thousands):

	Total	Level 1	Level 2	Level 3
Assets:				
Marketable Securities	$ 45,216	$ 45,216	$ -	$ -
Liabilities:				
Warrants	2,760	-	-	2,760
Total	$ 47,976	$ 45,216	$ -	$ 2,760

For detailed information regarding the change to the fair value of assets recorded in Level 1 (See Note 5: Marketable Securities).

The changes in Level 3 Liabilities measured at fair value on a recurring basis are summarized as follows:

	Fair Value of Redeemable Warrants (in thousands)	
	June 30,2009	June 30, 2010
Balance at beginning of period	$ -	$ 3,684
Value at issuance	17,359	-
Less: value of warrants exercised in May and June 2009	(3,742)	-
Fair value adjustment at June 30	7,186	(924)
Balance at June 30	$ 20,803	$ 2,760

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Note 11: Restatement

In connection with equity financings on May 11 and 19, 2009, we issued warrants (the "Warrants") that are single compound derivatives containing both an embedded right to obtain stock upon exercise (a "Call") and a series of embedded rights to settle the Warrants for cash upon the occurrence of certain events (each, a "Put"). Generally, the Put provisions allow the Warrant Holders liquidity protection; the right to receive cash in certain situations where the Holders would not have a means of readily selling the shares issuable upon exercise of the Warrants (e.g., where there would no longer be a significant public market for our common stock). However because the contractual formula used to determine the cash settlement value of the embedded Put requires use of certain assumptions, the cash settlement value of the embedded Put can differ from the fair value of the unexercised embedded Call option at the time the embedded Put option is exercised. Specifically, the Put rights would be triggered upon the happening of a "Fundamental Transaction" (as defined below) that also is (1) an all cash transaction; (2) a "Rule 13e-3 transaction" under the Exchange Act (where the Company would be taken private); or (3) a transaction involving a person or entity not traded on a national securities exchange. "Fundamental Transactions" include (i) a merger or consolidation of the Company with or into another person or entity; (ii) a sale, lease, license, transfer or other disposition of all or substantially all of the Company's assets; (iii) any purchase offer, tender offer or exchange offer in which holders of Company Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property, which offer has been accepted by the holders of 50% or more of the Company's outstanding Common Stock; (iv) a reclassification, reorganization or recapitalization of the Common Stock pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property; or (v) a stock purchase or other business combination with another person or entity is effected pursuant to which such other person or entity acquires more than 50% of the outstanding shares of Common Stock. Pursuant to the Warrants, the Put rights enable the Warrant Holders to receive cash in the amount of the Black-Scholes value is obtained from the "OV" function on Bloomberg, L.P. ("Bloomberg") determined as of the day of consummation of the applicable Fundamental Transaction for pricing purposes and reflecting (A) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Warrant expiration date, (B) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg as of the Trading Day immediately following the public announcement of the applicable Fundamental Transaction, (C) the underlying price per share used in such calculation shall be the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Fundamental Transaction and (D) a remaining option time equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Warrant expiration date.

Initially, the Company determined that these Warrants created a related Liability in accordance with ASC 480-10-55-29 & 30 due to the fact that the Warrants could be settled for cash as discussed above. In their estimation of the value of this Liability, the Company interpreted and applied the concept of "Fair Value" from ASC 820 (formally SFAS 157). After reviewing current accounting literature and the findings and opinion of an independent appraiser in determining proper accounting treatment, the Company took into account the extreme unlikelihood of the occurrence of a Fundamental Transaction triggering a right to cash settlement as a probability factor in applying a Black-Scholes-Merton valuation of the Warrants. As a result, Management deemed the fair value of the Warrants to be immaterial and, therefore, stated the Warrants' related Liability from May 31, 2009 through December 31, 2009 at zero.

On September 15, 2010, the Company received a comment letter from the Securities and Exchange Commission ("SEC") concerning its review of the Company's annual report on Form 10-K, as amended, for the year ended December 31, 2009. During the process of resolving the SEC's comments, the SEC Staff alerted Management that they did not agree with their method of computing the fair value of the Warrants as discussed above.

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As a result, on December 22, 2010, after discussion with McGladrey & Pullen, LLP, the Company's independent registered public accounting firm, the Company's Audit Committee determined that the previously issued financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2009 and in its Forms 10-Q for the periods ended March 31, 2010, June 30, 2010 and September 30, 2010 and in its Forms 10-Q for the periods ended June 30, 2009 and September 30, 2009, should not be relied upon. Management has restated the financial statements for the year ended December 31, 2009 contained in the Company's Form 10-K and in its Forms 10-Q for the periods ended March 31, 2010, June 30, 2010 and September 30, 2010 (including the comparable periods ended June 30, 2009 and September 30, 2009) to reflect the revised value of this Liability.

The restatements reflect the recalculation of the fair value of the Warrants using a Monte Carlo Simulation approach, applying critical assumptions provided by Management reflecting conditions at the valuation date. The Monte Carlo Simulation approach incorporates the incremental value of the Put rights available to the Warrant Holders. The fair value of Warrants ranged from $0.37 to $0.38 at December 31, 2009, ranged from $2.11 to $2.14 at June 30, 2009 and was consistent at $0.28 for June 30, 2010.

The Company recomputes the fair value of the Warrants at the end of each quarterly reporting period. Such value computation includes subjective input assumptions that are consistently applied each period. If the Company were to alter its assumptions or the numbers input based on such assumptions, the resulting fair value could be materially different.

Fair value at June 30, 2009, was estimated using the following assumptions:

Underlying price per share	$2.54
Exercise price per share	$1.31 – $1.65
Risk-free interest rate	2.50% - 2.67%
Expected holding period	4.88 - 5.38 years
Expected volatility	100.82% – 103.91%
Expected dividend yield	None

Fair value at June 30, 2010, was estimated using the following assumptions:

Underlying price per share	$0.47
Exercise price per share	$1.31 – $1.65
Risk-free interest rate	1.36% - 1.55%
Expected holding period	3.89 – 4.38 years
Expected volatility	112.16% – 115.41%
Expected dividend yield	None

The significant assumptions using the Monte Carlo Simulation approach for valuation of the Warrants are:

(i) Risk-Free Interest Rate. The risk-free interest rates for the Warrants are based on U.S Treasury constant maturities for periods commensurate with the remaining expected holding periods of the warrants.
(ii) Expected Holding Period. The expected holding period represents the period of time that the Warrants are expected to be outstanding until they are exercised. The Company utilizes the remaining contractual term of the Warrants at each valuation date as the expected holding period.

(iii) Expected Volatility. Expected stock volatility is based on daily observations of the Company's historical stock values for a period commensurate with the remaining expected holding period on the last day of the period for which the computation is made.

(iv) Expected Dividend Yield. Expected dividend yield is based on the Company's anticipated dividend payments over the remaining expected holding period. As the Company has never issued dividends, the expected dividend yield is $-0- and this assumption will be continued in future calculations unless the Company changes its dividend policy.

(v) Expected Probability of a Fundamental Transaction. The possibility of the occurrence of a Fundamental Transaction triggering a Put right is extremely remote. As discussed above, a Put right would only arise if a Fundamental Transaction 1) is an all cash transaction; (2) results in the Company going private; or (3) is a transaction involving a person or entity not traded on a national securities exchange. The Company believes such an occurrence is highly unlikely because:

a. The Company only has one product that is FDA approved;
b. The Company will have to perform additional clinical trials for FDA approval of its flagship product;
c. Industry and market conditions continue to include a global market recession, adding risk to any transaction;
d. Available capital for a potential buyer in a cash transaction continues to be limited;
e. The nature of a life sciences company is heavily dependent on future funding and high fixed costs, including Research & Development;
f. According to Forbes.com, of approximately 17,000 public companies, fewer than 30 went private in 2008 and less than 100 were completed in 2007, representing 0.18% and 0.6%, respectively. This would be further reduced based on the nature of a life sciences company and the potential lack of revenues, cash flows and the Company's funding needs; and
g. The Company's Rights Agreement makes it less attractive to a potential buyer.

With the above factors utilized in analysis of the likelihood of the Put's potential Liability, the Company estimated the range of probabilities related to a Put right being triggered as:

Range of Probability	Probability
Low	0.5%
Medium	1.0%
High	5.0%

The Monte Carlo Simulation incorporated a 5.0% probability of a Fundamental Transaction.

(vi) Expected Timing of Announcement of a Fundamental Transaction. As the Company has no specific expectation of a Fundamental Transaction, for reasons elucidated above, the Company utilized a discrete uniform probability distribution over the Expected Holding Period to model in the potential announcement of a Fundamental Transaction occurring during the Expected Holding Period.

(vii) Expected 100 Day Volatility at Announcement of a Fundamental Transaction. An estimate of future volatility is necessary as there is no mechanism for directly measuring future stock price movements. Daily observations of the Company's historical stock values for the 100 days immediately prior to the Warrants' grant dates, with a floor of 100%, were utilized as a proxy for the future volatility.

(viii) Expected Risk-Free Interest Rate at Announcement of a Fundamental Transaction. The Company utilized a risk-free interest rate corresponding to the forward U.S. Treasury rate for the period equal to the time between the date forecast for the public announcement of a Fundamental Transaction and the Warrant expiration date for each simulation.

(ix) Expected Time Between Announcement and Consummation of a Fundamental Transaction. The expected time between the announcement and the consummation of a Fundamental Transaction is based on the Company's experience with the due diligence process performed by acquirers, and is estimated to be six months. The Monte Carlo Simulation approach incorporates this additional period to reflect the delay Warrant Holders would experience in receiving the proceeds of the Put.

As a result, the Company restated its financial statements included in its amended and restated annual report on Form 10K/A-2 and the Company has restating its financial statements as and for the periods ended June 30, 2010 and 2009 herein as follows:

HEMISPHERX BIOPHARMA, INC. AND SUBSIDIARIES
Consolidated Balance Sheet
June 30,2010

(in thousands)

	June 30,2010 As Previously Reported	Adjustments	June 30, 2010 As restated
ASSETS			
Current Assets:			
Cash and cash equivalents	$ 5,331		$ 5,331
Marketable securities maturing in less than one year	30,433		30,433
Inventories	934		934
Prepaid expenses and other current assets	120		120
Total current assets	36,818		36,818
Property and equipment, net	4,675		4,675
Marketable securities maturing in one year or greater	14,783		14,783
Patent and trademark rights, net	836		836
Investment	35		35
Construction in progress	405		405
Other assets	35		35
Total assets	$ 57,587		$ 57,587
LIABILITIES AND STOCKHOLDERS' EQUITY			
Current liabilities:			
Accounts Payable	$ 1,335		$ 1,335
Accrued expenses	509		509
Current portion of capital lease	35		